

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-05 H-01 INR-10
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TO SECSTATE WASHDC 4972
INFO AMEMBASSY BONN
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AMEMBASSY OSLO
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BRUSSELS ALSO FOR USEEC

E.O. 11652: N/A
TAGS: PINT, SP
SUBJECT: THE CONSTITUTION: A STATUS REPORT

REF: MADRID 5978, 5272

1. SUMMARY: THE CONGRESS CONSTITUTIONAL COMMITTEE, AS OF JUNE 16, WAS WELL DOWN THE HOMESTRETCH OF ITS DELIBERATIONS, HAVING APPROVED SOME 139 OF THE DRAFT'S 161 ARTICLES (A NUMBER OF "TRANSITORY DISPOSITIONS" ALSO REMAIN TO BE TREATED). ALMOST ALL OF THE THORNIEST ISSUES -- MONARCHY, ECONOMIC MODEL, EDUCATION, CHURCH-STATE RELATIONS, DIVORCE, AND, IN PART, REGIONAL AUTONOMY-- HAVE NOW BEEN DECIDED, AND THE COMMITTEE'S WORK MIGHT
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BE WRAPPED UP NEXT WEEK. THE DRAFT WILL THEN PASS TO THE FULL CONGRESS, AND LATER TO THE SENATE, WITH APPROVAL OF THE CONSTITUTION IN NATIONAL REFERENDUM STILL ANTICIPATED IN EARLY TO MID-OCTOBER.

2. ALTHOUGH ALL PARTIES REPRESENTED ON THE COMMITTEE HAVE AT ONE TIME OR ANOTHER ABSTAINED OR VOTED "NO",

BROAD AGREEMENT ON THE DRAFT CONTINUES TO HOLD AND, IN GENERAL, THE "NO'S" ARE NOT EXPECTED TO TRANSLATE INTO ANY ANTI-APPROVAL CAMPAIGN. TWO POSSIBLE TROUBLE SPOTS, HOWEVER, ARE FRAGA'S AP AND THE BASQUE PNV. AP, BELIEVING UCD HAS MADE TOO MANY CONCESSIONS TO THE LEFT, PROBABLY HAS CAST MORE NEGATIVE VOTES THAN ALL THE OTHER COMMITTEE MEMBERS COMBINED, AND IT IS SMARTING UNDER ITS EXCLUSION FROM THE INFORMAL UCD/PSOE-CENTERED NOCTURNAL NEGOTIATIONS WHICH HAVE PRODUCED THE MUTUAL CONCESSIONS THAT HAVE KEPT COMMITTEE DELIBERATIONS MOVING AHEAD. THE PNV, FOR ITS PART, HAS VOTED AGAINST SOME PARTS OF THE ALL-IMPORTANT AUTONOMY TITLE. WHILE NEITHER PARTY HAS INDICATED IT INTENDS TO CARRY ITS RESERVATIONS TO THE PEOPLE -- AND INDEED ALMOST CERTAINLY HAS NOT YET MADE ANY DECISION IN THIS REGARD -- BOTH AP'S AND THE PNV'S POSTURE VIS-A-VIS THE DRAFT WILL BEAR CLOSE WATCHING AS IT MOVES OUT OF COMMITTEE AND ONTO THE FLOOR OF THE CONGRESS. END SUMMARY.

3. IT HAS BEEN CLEAR ALL ALONG THAT THE DRIVING FORCE BEHIND THE MAINTENANCE OF SOME SEMBLANCE OF CONSENSUS HAS BEEN THE CONVICTION THAT THE CONSTITUTION HAD TO BE A DOCUMENT WHICH WOULD PERMIT ANY OF THE MAJOR PARTIES TO GOVERN, AND WHICH WOULD NOT ITSELF BECOME A POLITICAL ISSUE. AS A RESULT, THERE HAVE BEEN NUMEROUS CONCESSIONS ON THE PART OF ALL CONCERNED: UCD, THE PSOE, THE PCE, LIMITED OFFICIAL USE

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THE REGIONAL PARTIES, AND, IN MANY CASES, AP. IN ADDITION TO MODIFICATIONS OF SUBSTANCE, THESE CONCESSIONS OFTEN INVOLVE THE INTRODUCTION OF SOME ELEMENT OF VAGUENESS WHICH MAKES CONTROVERSIAL ARTICLES SUSCEPTIBLE TO DIFFERENT INTERPRETATIONS. THEY ALSO HAVE MEANT THE RATHER FREQUENT INSERTION OF THE PROVISION FOR FURTHER ENABLING LEGISLATION TO FIRMLY FIX THE MEANING OF A PARTICULAR ARTICLE, A METHOD OF ALLOWING THE BATTLE TO BE JOINED IN THE NORMAL COURSE OF LEGISLATION, RATHER THAN INJECTING THE DISAGREEMENT INTO THE CONSTITUTION ITSELF. (WE WILL PROVIDE A DETAILED READ-OUT ON THE MOST IMPORTANT ARTICLES WHEN COMMITTEE CONSIDERATION HAS CONCLUDED.)

4. THIS APPROACH HAS KEPT COMMITTEE DELIBERATIONS MOVING ALONG, TO THE POINT WHERE THE ONLY SECTIONS OF THE DRAFT REMAINING TO BE TREATED ARE:

--ARTICLES 63 AND 64, CONCERNING THE ELECTION AND COMPOSITION OF THE CONGRESS OF DEPUTIES AND THE SENATE. CONSIDERATION OF THESE ARTICLES WAS POSTPONED WHEN IT BECAME CLEAR THAT UCD AND THE LEFT COULD NOT REACH

AGREEMENT. SPECIFICALLY, THE LEFT INSISTED ON AN EXPLICIT REFERENCE TO THE PROPORTIONAL REPRESENTATION SYSTEM OF ELECTION FOR THE LOWER HOUSE, WHILE UCD HAS TAKEN THE POSITION THAT THE CONSTITUTION SHOULD NOT PREJUDICE FUTURE DECISIONS ON ELECTION LAW MATTERS BY ESTABLISHING "PR" OR ANY OTHER ELECTORAL SYSTEM. THE LEFT HAS FOLDED INTO ITS ADVOCACY OF "PR" THE CONCEPT OF ONE MAN, ONE VOTE. UNSTATED, BUT ALMOST CERTAINLY UNDERLYING UCD'S OPPOSITION TO SUCH AN EXPLICIT REFERENCE IS THE ADVANTAGE WHICH ACCRUES TO UCD UNDER THE EXISTING ELECTION LAW FOR THE LOWER HOUSE, WHICH DOES NOT PROVIDE FOR ONE MAN, ONE VOTE, IN THAT IT GUARANTEES EACH PROVINCE A MINIMUM OF 2 DEPUTIES BEFORE IT BEGINS TO

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ALLOCATE SEATS ON A POPULATION BASIS.

-- THE REMAINDER OF THE AUTONOMY TITLE (ART. 142-151).

-- THE CONSTITUTIONAL TRIBUNAL (ART. 152-158).

-- CONSTITUTIONAL REFORM (ART. 159-161).

-- TRANSITORY DISPOSITIONS (DEALING PRINCIPALLY WITH

THE MECHANISM FOR NAVARRE'S DECISION ON JOINING, OR NOT, THE BASQUE REGION, AND REAFFIRMING THE FOUR-YEAR MANDATE OF THE SITTING CORTES).

--AND A PRO FORMA FINAL DISPOSITION.

5. AT WRITING, THE OUTLOOK FOR THE MAINTENANCE OF THE LIMITED OFFICIAL USE

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CONSENSUS AMONG MOST OF THE PARTIES IS EXCELLENT. ALTHOUGH DEBATE ON SOME ARTICLES WILL CONTINUE IN THE CONGRESS AND SENATE, THERE APPEARS TO BE NO ISSUE WHICH WOULD CAUSE UCD, THE PSOE, THE COMMUNISTS, OR THE CATALAN MINORITY TO CAMPAIGN AGAINST APPROVAL OF THE DOCUMENT AS A WHOLE IN REFERENDUM. THE POSTURE OF AP AND THE PNV, HOWEVER, IS LESS CLEAR.

-- AP CLEARLY IS UNCOMFORTABLE WITH A NUMBER OF CONCESSIONS MADE BY UCD ON A VARIETY OF ARTICLES, BEGINNING WITH ARTICLE 2, WHICH EMPLOYS THE WORD "NATIONALITIES" WITH REFERENCE TO THE REGIONS. FRAGA MAY ALSO BELIEVE THAT UCD'S "OVERLY PROGRESSIVE" POSTURE ON A NUMBER OF ARTICLES MAKES IT VULNERABLE TO AP PRESSURE ON UCD'S RIGHT FLANK, AND HE MAY WELL BE PLANNING TO EXTRACT WHAT POLITICAL MILEAGE HE CAN DURING FULL DEBATE ON THE FLOOR OF THE CONGRESS AND SENATE. (WE NOTE, FOR EXAMPLE, THAT CONSERVATIVE CATHOLIC PARENTS' ORGANIZATIONS CLAIM TO HAVE OVER ONE MILLION SIGNATURES OF PEOPLE WHO OPPOSE THE EDUCATION PROVISIONS AS INSUFFICIENTLY GUARANTEEING THEIR "FREEDOM OF CHOICE.") IT IS A LONG AND RISKY STEP FROM THERE TO OPPOSITION TO THE CONSTITUTION IN REFERENDUM, HOWEVER, AND UCD APPEARS TO BE OPERATING ON THE PREMISE THAT FRAGA, HAVING LEARNED HIS LESSON IN THE JUNE 1977 ELECTIONS, WILL NOT PLACE AP IN THE UNCOMFORTABLY ISOLATED POSITION OF OPPOSING A FINAL DOCUMENT WHICH ALL OF THE OTHER PARTIES, WITH THE POSSIBLE EXCEPTION OF THE PNV, ARE UNITED BEHIND.

-- THE PNV'S PROBLEM IS OF QUITE A DIFFERENT SORT. DURING CONSIDERATION JUNE 15 OF THE 29 PROVISIONS CONCERNING THOSE POWERS TO BE RESERVED EXPRESSLY TO THE CENTRAL GOVT (ART. 141), THE PNV ACQUIESCED IN 21, BUT ABSTAINED ON 4 LIMITED OFFICIAL USE

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AND VOTED "NO" ON 4 OTHERS (MOUNTAINS AND FORESTS, CONVOCAION OF REFERENDUMS, ACADEMIC AND PROFESSIONAL

TITLES AND NORMS, AND CONTROL OF THE PUBLIC ORDER FORCES). THE PNV EXPRESSED ITS STRONGEST OPPOSITION TO THE PROVISION FOR CENTRAL GOVT CONTROL OVER THE POLICE, INSISTING INSTEAD THAT THE BASQUES BE ALLOWED ULTIMATE AUTHORITY OVER PUBLIC ORDER FORCES IN THEIR REGION. IT IS NOT YET CLEAR HOW FAR THE PARTY WILL TAKE ITS OPPOSITION. BUT IT FINDS ITSELF IN THE DIFFICULT POSITION OF HAVING TO DEFEND ITS CREDENTIALS AS PALADIN OF BASQUE RIGHTS AND ASPIRATIONS, WHILE THE RADICAL BASQUE LEFT, TO WHICH THE PNV UNDERSTANDABLY IS QUITE SENSITIVE, HAS MADE IT CLEAR THAT IT CONSIDERS THE PROVISIONS ON AUTONOMY UNACCEPTABLE. THE PNV'S DECISION ON WHAT POSITION TO TAKE VIS-A-VIS THE CONSTITUTION AS A WHOLE HAS NOT BEEN MADE YET: PARTY LEADER JAVIER ARZALLUZ WAS RELATIVELY UPBEAT WITH THE PRESS JUNE 16, CHARACTERIZING ARTICLE 141 AS "GOOD OVERALL." BUT, HE ADDED, "WE WANTED TO BE ABLE TO RETURN TO THE BASQUE COUNTRY AND AFFIRM THAT THE CASE WAS CLOSED, AND WE STILL ENTERTAIN SOME DOUBTS ABOUT THAT." AS NOTED REFTELS, APPROVAL OF THE CONSTITUTION IN THE PROVINCES OF VIZCAYA AND GUIPUZCOA COULD WELL DEPEND ON WHETHER THESE "DOUBTS" ARE RESOLVED TO THE PNV'S SATISFACTION. BREMENT

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